

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>			1. CONTRACT ID CODE	PAGE 1 OF 40 PAGES
2. AMENDMENT/MODIFICATION NO. <b>M069</b>	3. EFFECTIVE DATE <b>October 1, 2004</b>	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)	
6. ISSUED BY <b>U.S. Department of Energy Albuquerque Operations Office Office of Management and Operating Contracts P.O. Box 5400 Albuquerque, New Mexico 87185-5400</b>		7. ADMINISTERED BY (If other than Item 6) CODE <b>U.S. Department of Energy National Nuclear Security Administration Manager, Kansas City Site Office P.O. Box 410202 Kansas City, Missouri 64141-0202</b>		
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code)  <b>Honeywell Federal Manufacturing &amp; Technologies, LLC 2000 E. 95<sup>th</sup> Street P. O. Box 419159 Kansas City, MO 64141-6159</b>		9A. AMENDMENT OF SOLICITATION NO.  9B. DATED (SEE ITEM 11)  10A. MODIFICATION OF CONTRACT/ORDER NO. <b>DE-AC04-01AL66850</b> 10B. DATED (SEE ITEM 13) <b>October 19, 2000</b>		
CODE	FACILITY CODE			

**11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS**

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation as amended, by one of the following methods:  
 (a) By completing Items 8 and 15, and returning \_\_\_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

**13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS;  
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.**

	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority): THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE-NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
<b>X</b>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: <b>Public Law 95-91 and Other Applicable Laws</b>
	D. OTHER (Specify type of modification and authority):

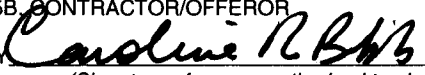
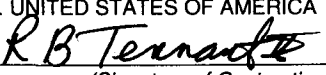
E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return   3   copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

**The purpose of this modification is to agree upon the following matters for the period of October 1, 2004 through September 30, 2005:**

- 1. Estimated Cost**
- 2. Maximum Available Fee**
- 3. Model Contract Provisions**
- 4. Modification and Additions to the Terms and Conditions**
- 5. Appendix D – Key Personnel**

Except as provided herein, all terms and conditions of the document referenced in Items 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) <b>Caroline R. Bibb, President Honeywell Federal Manufacturing &amp; Technologies</b>		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) <b>Ralph B. Tennant II, Contracting Officer Kansas City Site Office</b>	
15B. CONTRACTOR/OFFEROR BY  (Signature of person authorized to sign)	15C. DATE SIGNED <b>4/29/05</b>	16B. UNITED STATES OF AMERICA BY  (Signature of Contracting Officer)	16C. DATE SIGNED <b>4/20/05</b>

1. **Section B.2, ESTIMATED COST, MAXIMUM AVAILABLE FEE, AND AVAILABLE FEE, is amended to read as follows:**

**B.2 ESTIMATED COST, MAXIMUM AVAILABLE FEE, AND AVAILABLE FEE**

- (a) Paragraphs (b) through (c), below, set forth the Estimated Cost, Maximum Available Fee, and Available Fee for the Contract term(s). At the start of each fiscal year, these paragraphs will be reviewed to include the appropriate figures for the upcoming fiscal year.
- (b) The Estimated Cost of the specified Contract periods, exclusive of the Contractor's Basic Fee, if any, and Award Fee is set forth below:

<u>Contract Period</u>	<u>Estimated Costs</u>
January 1, 2001, through September 30, 2001	\$277,000,000
October 1, 2001, through September 30, 2002	\$443,448,000
October 1, 2002, through September 30, 2003	\$446,439,000
October 1, 2003, through September 30, 2004	\$501,619,000
October 1, 2004, through September 30, 2005	\$501,166,138

- (c) (1) The Maximum Available Award Fee for the period October 1, 2004 through September 30, 2005 is \$22,260,029. In addition, \$2,535,669 is available based on an estimated amount of Work for Others and \$1,161,165 for an estimate for Laboratory Reimbursable Work, for a Total Available Fee of \$25,956,862.
- (2) The Available Fees for the specified Contract periods is set forth below:

<u>Contract Period</u>	<u>Available Fee</u>
January 1, 2001, through September 30, 2001	
Award Fee	\$ 5,108,500
Performance-Based Incentive	<u>\$ 9,891,500</u>
Total	\$15,000,000
October 1, 2001, through September 30, 2002	
Award Fee	\$ 9,034,000
Performance-Based Incentive	<u>\$14,050,000</u>
Total	\$23,084,000

**October 1, 2002, through September 30, 2003**

<b>Award Fee</b>	<b>\$12,186,000</b>
<b>Performance-Based Incentive</b>	<b><u>\$11,174,000</u></b>
<b>Total</b>	<b><u>\$23,360,000</u></b>

**October 1, 2003, through September 30, 2004**

<b>Award Fee</b>	<b>\$12,905,000</b>
<b>Performance-Based Incentive</b>	<b><u>\$11,625,000</u></b>
<b>Total</b>	<b><u>\$24,530,000</u></b>

**October 1, 2004, through September 30, 2005**

<b>Award Fee</b>	<b>\$13,460,029</b>
<b>Performance-Based Incentive</b>	<b>\$ 8,800,000</b>
<b>Work for Others</b>	<b>\$ 2,535,669</b>
<b>Laboratory Reimbursable Work</b>	<b><u>\$ 1,161,165</u></b>
<b>Total</b>	<b><u>\$25,956,862</u></b>

2. The following Section H clauses are amended as set forth below. With the exception of H.28 (which is only renumbered), these clauses are added as part of NNSA's "Model Contract" initiative.

- a. Section H.1, REPRESENTATIONS AND CERTIFICATIONS, is moved to become H.28, and replaced with the following new H.1.

**H.1 REDEFINING THE FEDERAL/CONTRACTOR RELATIONSHIP  
TO IMPROVE MANAGEMENT AND PERFORMANCE**

**(a) General**

The NNSA is committed to improving the effectiveness and efficiency of the Nuclear Weapons Complex. This H-1 Clause sets forth an overview of NNSA's approach to achieve this commitment. The following Contract Clauses set forth the specific Contract requirements that will provide the Contractor the flexibility to improve its management and performance. Collectively these clauses are referred to herein as "the performance improvement model" or "the model."

- H.1 Redefining the Federal/Contractor Relationship to Improve Management and Performance
- H.5 Performance Direction
- H.7 Operating Requirements and Standards Management
- H.31 Use of Parent Corporate Systems, Home and Branch Office, and Other Support

- H.35 NNSA Oversight/Contractor Assurance
- H.39 Accountability
- H.40 Contractor Reinvestment of Cost Efficiencies
- H.47 Multi-Year Plant's Vision for Continuous Improvement
- H.48 Performance-Based Management
- H.49 Performance Incentives

(b) Clarifying the Contract Relationship

To clarify the contractual relationship, NNSA will provide program and performance direction regarding **what** NNSA wants in each of its programs. The Contractor shall determine **how** the program is executed and shall be accountable for performance in accordance with the terms and conditions of this Contract. The Contractor will have the flexibility to use its expertise and ingenuity to determine how the work is to be accomplished in the most effective and efficient manner. NNSA will issue performance direction to the Contractor only through a warranted Contracting Officer or a designated COR. All other Federal staff and oversight components are therefore precluded from tasking contractor personnel.

(c) Approach to Oversight

NNSA will rely on increased Contractor accountability as a result of implementation of the Contractor's Site Assurance System. In certain areas, NNSA oversight will focus on evaluating systems and performance rather than transactions. NNSA will transition its oversight of programs, projects, business systems and ongoing operations from a transactional to a performance and systems based approach.

(d) Empowering Contractor Expertise

NNSA will allow the Contractor to identify and evaluate, for NNSA approval, best commercial standards and best business practices and to continuously pursue improvements in aspects of Contract performance where cost effective and efficient improvements can be achieved. The Contractor is also encouraged to use the private-sector expertise of its parent organization to improve Contract performance as appropriate by maintaining and enhancing strong ties to the contractor's parent organization, the exercise of parent accountability over contract operations, and maintaining and expanding the application of corporate systems, processes and human resources to the contract.

(e) Results-Oriented, Streamlined Performance Appraisal

A results-oriented, streamlined performance appraisal process will be established with critical performance objectives, measures, and targets that focus on those areas of greatest strategic value to NNSA using systems-based metrics.

(f) Reward for Achieving Cost Efficiencies

The Contractor will be rewarded for the achievement of cost efficiencies through onsite investment of cost savings.

(g) Achieve the Vision for the KCP

The Contractor shall work to achieve the NNSA's vision for the KCP. The NNSA's vision is for the KCP to remain a viable part of the nuclear weapons complex. This will require the contractor to develop a more flexible manufacturing facility, including its workforce, that is capable of delivering a technologically challenging and diverse range of weapons components on short notice, and within short schedules. Furthermore, the facility shall be cost-effective so that overall the KCP remains a viable alternative for the production and delivery of nuclear weapons components.

The NNSA also expects the Contractor to develop the Kansas City Plant into a facility that brings technologies to production for other government agencies beyond NNSA including the Department of Defense and the Department of Homeland Security, assisting in preserving the nation's manufacturing base, and offsetting the costs of maintaining the KCP for the nuclear weapons complex through growth in work for other entities. The NNSA and the Contractor will deploy innovative approaches to incentivizing and attracting new sources of funding and new production and engineering opportunities to the KCP.

(h) Maintaining Critical Skills and Capabilities for the KCP

The Contractor can assist in maintaining critical skills at the KCP for the nuclear weapons complex through growth in work for other entities. The NNSA and the Contractor will deploy innovative approaches to incentivizing and attracting new sources of funding and new production and engineering opportunities to the KCP.

(i) Partnering

NNSA and the Contractor shall partner as appropriate on ensuring the success of this Performance Improvement Model by mutually establishing a Vision for the model, collaborating on the Model's effectiveness, and proposing and designing changes designed to ensure its success.

(j) Business Operational Excellence

The NNSA expects the Contractor, through the normal course of its mission, to demonstrate business operational excellence by optimizing and streamlining business processes throughout the enterprise while concentrating on minimizing costs, increasing efficiency, enhancing productivity and striving to institutionalize Best in Class practices. The Contractor shall include its plans for implementing this article in the annual plan it submits to NNSA as required by the clause titled, "Multi-Year Plant's Vision For Continuous Improvement" (H-47).

The Contractor should collaborate with its nuclear weapons complex (NWC) counterparts to improve NWC wide capability and productivity.

Basic attributes that underlie NNSA's business excellence policy:

- (1) Open communication; close cooperation and collaboration; and, a mutually beneficial and proactive cooperative environment within which to achieve contract and mission objectives and resolve issues.
- (2) Structured, performance-based business practices that provide consistent, secure, reliable support of the various mission assignments in the areas of research, science, weapon development, production, assembly, testing, transportation, disassembly and disposal.
- (3) Consistent with Supply Chain Management concepts business practices shall include all facets of the enterprise, starting from the point of first customer contact through the customer notification that the product must be disassembled and disposed. This includes practices that reflect the ongoing evaluation and measurement of supplier performance.
- (4) Business practices must be subject to continuous improvement, measured and periodically benchmarked to determine if best in

class results are being achieved.

- (5) Improve productivity through cost reductions. Procurement practices should emphasize competition, especially with small businesses, innovation, interoperability, commercial applications, strategic purchasing and leveraging common requirements with other NNSA entities.
- (6) To the greatest extent practical implement electronic processes to streamline business practices and where directed by NNSA for strategic purposes, collectively integrate those electronic processes into one NNSA-enterprise-wide application.
- (7) To the greatest extent practical digitize forms, documents, policies, procedures, specifications, drawings, etc that are integral to the business practices.

- b. Section H.5 is deleted in its entirety and replaced with the following new clause:

#### **H.5 PERFORMANCE DIRECTION**

- (a) The contractor is responsible for the management, integration, and operation of the site in accordance with the Terms and Conditions of the contract, duly issued Work Authorizations (WAs), and written direction provided by the Contracting Officer and the Contracting Officer's Representatives (COR). NNSA is responsible for establishing the work to be accomplished, the applicable standards and requirements to be met, and overseeing the work of the contractor. The contractor will use its expertise and ingenuity in contract performance and in making choices among acceptable alternatives to most effectively and efficiently accomplish the work called for by this contract.
- (b) Only the Contracting Officer may assign, modify, and priority rank WAs.
- (c) (1) The Contracting Officer and the NNSA Administrator will designate, in writing, specific NNSA employees as CORs with the authority to issue Performance Direction to the contractor. CORs are authorized to act within the limits of their delegation letter. A copy of each letter will be provided to the contractor. COR functions include technical monitoring, inspection, and other functions of a technical nature not involving a change in the scope, cost, or Terms and Conditions of the contract.

- (2) The contractor must comply with written Performance Directions that are signed by the COR and:
  - (i) Redirect the contract effort, shift work emphasis within a work area or a WA, require pursuit of certain lines of inquiry, further define or otherwise serve to accomplish the Statement of Work (SOW), or
  - (ii) Provide information that assists in the interpretation of drawings, specifications, or technical portions of the work description.
- (3) Performance Direction does not:
  - (i) authorize the contractor to exceed the funds obligated on the contract;
  - (ii) authorize any increased cost or delay in delivery in a WA;
  - (iii) entitle the contractor to an increase in fee; or
  - (iv) change any of the terms or conditions of the contract.
- (d)
  - (1) The contractor shall accept only Performance Direction that is provided in writing by a COR and that is within the SOW and a WA.
  - (2) The COR is authorized to review and approve technical reports, drawings, specifications, and technical information delivered by the contractor.
- (e)
  - (1) The contractor shall promptly comply with each duly issued Performance Direction unless the contractor reasonably believes that the Performance Direction violates this clause. If the contractor believes the Performance Direction violates this clause, the contractor shall suspend implementation of the Performance Direction and promptly notify the Contracting Officer of its reasons for believing that the Performance Direction violates this clause. The contractor shall confirm these reasons in writing to the Contracting Officer within ten workdays from receipt of the Performance Direction.



- (2) The Contracting Officer will determine if the Performance Direction is within the SOW and WA. This determination will be issued in writing and the contractor shall promptly comply with the Contracting Officer's direction. If it is not within the SOW or WA, the Contracting Officer may issue a change order pursuant to the Changes clause.
  - (f) The parties agree to maintain full and open communication at all times, and on all issues affecting contract performance, during the term of this contract. Performance direction issued pursuant to this clause is intended to be consistent with the approach described in Clause H.1(b) that government direction will be limited to "what" the contractor intends to accomplish. The contractor is encouraged to identify concerns to the Contracting Officer whenever it believes that performance direction defines "how" the contractor is intended to accomplish the work, and the Contracting Officer will work to revise the performance direction if appropriate.
- c. Section H.7 is deleted in its entirety and replaced with the following new clause:

**H.7 OPERATING REQUIREMENTS AND STANDARDS  
MANAGEMENT**

- (a) The Contractor shall comply with a set of "Operating Requirements" that include laws, regulations, DOE directives issued in accordance with the Contract Clause entitled "Laws, Regulations, and DOE Directives," best-in-class commercial standards and best business practices. A current list of operational requirements shall be maintained by the Contractor as an "Operating Requirements" section of a plant information system that is to be updated weekly and available to all employees and the DOE. Revisions to the "Operating Requirements" shall be performed in accordance with Paragraph (b) of the Contract Clause entitled "Laws, Regulations, and DOE Directives." While that paragraph addresses unilateral changes by the Contracting Officer, this Clause is designed to allow both parties to initiate revisions for consideration.
- (b) The Contractor shall regularly benchmark with industry to identify best-in-class commercial standards and best business practices that will improve site operations with the goal of improving performance where cost effective. In this context, the term "standard" encompasses DOE Directives, DOE/NNSA requirements and mandates, and national and international consensus and generally accepted standards in accordance with NNSA policy. The parties shall use a jointly agreed upon process to

tailor standards to be used at the KCP across all applicable requirements. The Contracting Officer will provide final approval of those standards accepted by NNSA.

- d. Section H.28, RESERVED, is deleted and replaced with the following former H.1 clause:

**H.28 REPRESENTATIONS AND CERTIFICATIONS**

The Representations, Certifications, and Other Statements of Offeror for this Contract as completed by the Contractor are hereby incorporated in this Contract by reference.

- e. Section H.31 is deleted in its entirety and replaced with the following new clause:

**H.31 USE OF PARENT CORPORATE SYSTEMS, HOME AND BRANCH OFFICE, AND OTHER SUPPORT**

- (a) The contractor is encouraged to identify opportunities for the use of parent corporate systems and corporate home and branch office personnel for site operations for the purposes of monitoring plant performance, assisting the plant in meeting its mission and operational requirements, streamlining the Contractor's administrative and business systems, improving performance, and adapting private sector expertise to plant issues.

For purposes of this clause, the term "systems" means any discrete process, procedure, program, document or instrument where cost of use under this contract can be identified and quantified to the parent corporation.

- (b) The Contractor, prior to using any parent corporate systems or home and branch office personnel where reimbursement is expected, shall submit a plan for review and approval by the Contracting Officer. In reviewing the Plan, the Contracting Officer shall consider the extent to which each separate element of the Plan is more efficient and represents an overall cost savings to the Government versus existing site systems, assists the parent corporation or the contractor in monitoring plant performance and in meeting mission and operational requirements or brings value-added expertise to plant issues. In addition, in using parent corporate systems, the Contractor must show that it is able to maintain associated data in a form readily transferable to a successor contractor.

- (c) Parent corporate systems and home and branch office personnel are allowable costs to the extent incurred consistent with the approved Plan and this clause.
- (d) The Contractor shall charge to the account of the Government as provided in the clause entitled "Payments and Advances," or as otherwise directed by the Contracting Officer, the amounts incurred for the approved systems and related support services. Such amounts will be charged and accounted for as follows however, in no event shall they be inconsistent with the FAR or DEAR cost principles applicable to this contract. Costs may include travel, per diem, and other out-of-pocket costs, plus the actual salaries of the persons performing such services plus a percentage factor of salaries to cover fringe benefits and payroll taxes. The percentage factor will be applied in accordance with the Contractor's Cost Accounting Standards Disclosure Statement. Costs reimbursed for parent corporate systems will be based on actual costs or some reasonable basis of allocation consistent with the Contractor's Cost Accounting Standards Disclosure Statement.
- (e) The Contractor shall provide periodic reports of activities and costs incurred as required by the Contracting Officer. The amount reimbursable under this Contract shall be subject to NNSA/DOE audit.
- f. Section H.35, RESERVED, is deleted and replaced with the following new clause:

### **H.35 NNSA OVERSIGHT/CONTRACTOR ASSURANCE**

- (a) As used in this clause, "NNSA oversight" encompasses activities performed by NNSA organizations to determine the effectiveness of contractor performance of the Scope of Work. Oversight includes onsite reviews, assessments, performance evaluations, and other activities.
- (b) "Contractor Assurance System" is a contractor's comprehensive, risk-based approach to ensuring it is performing the scope of work of this contract. A contractor assurance system includes activities designed to identify deficiencies and opportunities for improvement, report deficiencies to responsible management, and ensure that corrective actions are completed and effective. An effectively working Contractor Assurance System will provide the government the opportunity to reduce oversight.
- (c) "Contract Required Management Systems" are management systems specifically required by the Contract and include Integrated Safety

Management, Integrated Safeguards and Security Management, and other similar management systems required by DOE Order or other directive.

- (d) The Contractor shall develop a Contractor Assurance System. The Contractor Assurance System shall, at a minimum.
  - (1) Align with the contractor's business model that describes and integrates all functional areas, management systems, work processes and work instructions relating to the contract;
  - (2) Demonstrate clear lines of accountability and authority for each work process;
  - (3) Contain Contract Required Management Systems within its scope;
  - (4) Apply various assurance elements to processes and systems on a risk based, graded approach including management reviews, oversight and administration, internal audits, internal independent assessments, and third-party assessments;
  - (5) Identify and rely upon performance metrics and targets to assess performance;
  - (6) Provide an approach to identify performance issues and take corrective actions;
  - (7) Contain an approach to continuous improvement of performance relying on benchmarking to identify best practices as appropriate.
- (e) The contractor shall document the architecture for the Contractor Assurance System. The architecture and any significant changes shall be subject to Contracting Officer approval.
- (f) The contractor shall provide the Contracting Officer with access to the Contractor Assurance System and visibility of its metrics.
- (g) At the end of each fiscal year the Contractor shall submit a report. This report shall include (i) an assessment of the effectiveness of, and the improvements achieved through, the Contractor Assurance System in accordance with Contract Clause entitled "Contractor Assurance System", and (ii) a statement by the Contractor's President assuring the Contracting Officer that the Contractor's management system utilized is adequate to provide reasonable assurance that its objectives are being accomplished

and that the systems and controls continue to be operational. The parties agree that this statement fulfills the DOE Order 413.1 requirement "The Contractor shall consider all existing information and report annually to the appropriate Head of a Departmental Element on the status of their management control systems and financial management systems."

- (h) NNSA oversight - NNSA shall apply its oversight of the contractor consistent with the contractor's management systems, the risk level of the work processes, the contractor's performance, and the effectiveness of the Contractor Assurance System. The Contracting Officer shall seek input from the contractor on the appropriate type and level of effort of oversight for management systems and processes. The oversight mechanisms shall be documented by NNSA and linked to the Contractor Assurance System and shall be subject to modification. In general, NNSA oversight shall be consistent with the following concepts:
  - (1) There will be less oversight in areas subject to well-recognized, independent third party assessments, when the third party assessments find that the contractor systems are performing adequately.
  - (2) The level of oversight shall take into account whether areas involve high risk processes, processes that are central to the core mission of the Kansas City Plant, or areas that are not central to the core mission such as administrative support functions.
  - (3) Oversight of Contract Required Management Systems shall be consistent with applicable NNSA Policies and DOE orders or regulations.
  - (4) Oversight shall not unduly interfere with contractor efforts to implement industrial standards and/or best commercial practices.
  - (5) Oversight is subject to increase in areas where performance deficiencies exist. However, prior to increasing oversight, the Contracting Officer shall consider whether contractor corrective action plans provide sufficient assurance.
- (i) Nothing in this clause shall restrict the oversight of independent oversight functions or for cause reviews authorized by the Secretary of Energy in the performance of their duties such as the Office of Independent Oversight and Performance Assurance.

- g. Section H.39, RESERVED, is deleted and replaced with the following new clause:

#### **H.39 ACCOUNTABILITY**

The Contractor is responsible for the quality of its products and for assessing its operations, programs, projects and business systems and identifying deficiencies and implementing needed improvements in accordance with the terms and conditions of this Contract, regardless of whether NNSA has evaluated the Contractor's performance in any area of the Contract. The Contractor is encouraged to rely upon parent corporate leadership, systems and processes as well as independent third party assessments in assessing its own performance under this contract. The purpose of NNSA oversight is for assessing the Contractor's performance in meeting its obligations under this Contract. NNSA oversight shall not be relied upon by the Contractor in assessing its performance.

- h. Section H.40, RESERVED, is deleted and replaced with the following new clause:

#### **H.40 CONTRACTOR REINVESTMENT OF COST EFFICIENCIES**

Prior to the beginning of each fiscal year, or as soon as practical after the budget is determined, the NNSA and the Contractor will identify and agree upon listings of un-funded priority direct mission work identified by specific appropriation and budget and reporting category. Throughout the fiscal year, the Contractor shall apply cost efficiencies achieved through streamlining systems and operations only to un-funded priority direct mission work within the same appropriation and budget and reporting category unless a formal reprogramming action is approved by NNSA. Indirect cost efficiencies shall be returned to the mission work in the form of reduced indirect rates or applied only to un-funded priority indirect work, which has been approved and documented. Although it is the intent of the NNSA that the Contractor shall apply cost efficiencies at the KCP, the NNSA reserves the right to reallocate direct mission work cost efficiencies to other programmatic mission critical needs.

3. The following new Section H clauses are hereby added.

a. **H.47 MULTI-YEAR PLANT'S VISION FOR CONTINUOUS IMPROVEMENT**

The Contractor shall prepare a multi-year Plant Vision detailing planned efforts, and anticipated results in improving the plant's management and performance through the Performance Improvement Model described in this contract and

through other methods. As part of the plan, the Contractor shall also include a description of contributions of the corporate parent to improving site management and performance and assuring accountability, a description of the Contractor's approach to participation within and coordination with the NNSA Weapons Complex, and a description of how the Contractor intends to pursue business operational excellence in accordance with the related paragraph in Clause H-1. The Plant's Vision is due by January 1 each year, shall be reviewed and revised annually, and shall be consistent with the Contractor's Institutional and Site Facility Plan.

NNSA recognizes that the success of the Performance Improvement Model may require its involvement from time to time. On request, NNSA will provide input to the Contractor on how to modify the Performance Improvement Model to accomplish its objectives more successfully, and will cooperate as necessary with the Contractor on accomplishing action items that have been approved by NNSA.

b. **H.48 PERFORMANCE-BASED MANAGEMENT**

(a) **Performance-Based Management System.** This Contract is a management and operating performance-based contract, which holds the Contractor accountable for performance. This Contract uses clearly defined standards of performance consisting of performance objectives in relation to award fee and performance-based incentives as described in the Contract Clause entitled "Performance Incentives" with measures and targets for each area agreed to in advance on a fiscal year basis and incorporated into the Performance Evaluation Plan. The Parties agree to continuously improve upon these standards of appraising Contractor performance.

(b) **Performance Appraisal Process.**

(1) **Performance Evaluation Plan.** A Performance Evaluation Plan developed by the Contracting Officer, with Contractor input, shall document the process by which the Contractor's performance will be evaluated. The Parties will strive to reach mutual agreement on expected business, operational and technical performance and will work together to develop performance objectives, performance-based incentives and associated measures and targets tied to key end products and NNSA/DOE strategic goals and objectives. In the event the parties fail to agree on the requirements, the Contracting Officer reserves the unilateral right to make the final decision on all performance objectives and performance incentives (including the associated measures and targets) used to evaluate

Contractor performance. The Performance Evaluation Plan shall be finalized:

- (i) Prior to the start of an appraisal period if the performance objectives, performance-based incentives and associated measures and targets have been mutually agreed to by the Parties; or
- (ii) Not later than thirty days prior to the scheduled start date of the appraisal period, if the performance objectives, performance incentives and associated measures and targets have been unilaterally established by the Contracting Officer.

Only the Contracting Officer may revise the Performance Evaluation Plan, consistent with the Contract statement of work, during the appraisal period of performance. The Contracting Officer shall notify the Contractor:

- (i) Of such bilateral changes at least sixty calendar days prior to the end of the affected appraisal period;
  - (ii) Of such unilateral changes at least ninety calendar days prior to the end of the affected appraisal period and at least thirty calendar days prior to the effective date of the change; or
  - (iii) If such change, whether unilateral or bilateral, is urgent and high priority, at least thirty calendar days prior to the end of the appraisal period.
- (2) Contractor Appraisal Self-Assessment Report. An annual self-assessment report will be prepared if required by the Contracting Officer by the Contractor of its performance against the performance objectives and incentives contained in the Performance Evaluation Plan and other significant factors as determined by the Contractor and Contracting Officer.
- (c) Schedule for Performance Incentive Fee earned determination.

The Contracting Officer shall issue the Fee Determination Official's final total available fee amount earned determination in accordance with the schedule set forth in the Performance Evaluation Plan or as otherwise set



forth in this contract. However, a determination must be made within sixty calendar days after the receipt by the Contracting Officer of the Contractor's self-assessment or seventy calendar days after the end of the evaluation period, whichever is later, or a longer period if the Contractor and Contracting Officer agree. If the Contracting Officer evaluates the Contractor's performance of specific requirements on their completion, the payment of any earned fee amount must be made within seventy calendar days (or such other time period as mutually agreed to between the Contracting Officer and the Contractor) after such completion. If the determination is delayed beyond that date, the Contractor shall be entitled to interest on the determined total available fee amount earned at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (*41 U.S.C. 611*) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest Rate," and is published in the Federal Register semiannually on or about January 1 and July 1. The interest on any late total available fee amount earned determination will accrue daily and be compounded in 30-day increments inclusive from the first day after the schedule determination date through the actual date the determination is issued. That is, interest accrued at the end of any 30-day period will be added to the determined amount of fee earned and be subject to interest if not paid in the succeeding 30-day period.

c. **H.49 PERFORMANCE INCENTIVES**

(a) Performance Incentives Negotiations

The Parties shall establish the specific Performance Incentives that the Contractor will be assessed against for fee determination in accordance with the Contract Clause entitled "Performance-Based Management." Performance Incentives can take the form of Award Fee Performance Objectives (POs) or Performance-Based Incentives (PBIs).

(b) Determination of Performance Incentives

- (1) The NNSA shall, at the conclusion of each specified appraisal period, evaluate the Contractor's performance for all Performance Incentive requirements. Performance factors will be evaluated in the aggregate.
- (2) The Performance Incentive fee determination will be made in accordance with the Performance Evaluation Plan. The determination as to the amount of Performance Incentive fee

earned is a unilateral determination made by the Fee Determination Official (FDO).

- (3) The Contractor shall be promptly advised in writing of the amount and the basis of the Performance Incentive fee determination.
  - (4) Performance Incentive fee not earned during the evaluation period shall not be allocated to future evaluation periods.
- (c) **Fee.** The maximum fees allocated for payments to the Contractor for the performance of the work under this Contract, other than those provided in paragraph (d) below, are set forth in Part I, Section B, of the Schedule. The Performance Incentives fee earned is available for payment in accordance with the Contract Clause entitled "Payments and Advances." There shall be no adjustment in the amount of the Contractor's fee by reason of differences between any estimate of cost for performance of the work under this Contract and the actual cost of performance of that work.
- (d) **Fixed Fee for Work For Others.** The Government and the Contractor recognize the value of expanding Work For Others (WFO) programs to achieve the KCP's vision of becoming a national security asset and to offset NNSA overhead costs for the KCP. The parties agree to the following fee structure for WFO programs for government agencies other than NNSA and for non-federal entities. The contractor shall assure the Contracting Officer that its accounting system is adequate for determining costs applicable to separate non-traditional WFO projects, which system will be subject to audit and review by the Government.
- (1) *General.* The Government shall pay the Contractor for performing non-traditional WFO an incentive fee based on the annual total actual billed costs as provided below.
  - (2) *WFO Total costs and maximum fee.*
    - (i) "Total Cost" means the actual billed costs of completing non-traditional WFO projects
    - (ii) "Maximum Fee" for non-traditional WFO projects means a percentage of the total cost, as determined in (3) below:
  - (3) The earned fee will be calculated as described below:

The maximum amount of fee an M&O Contractor can earn is 7% of the total estimated costs for the fiscal year. The NNSA will determine the exact percentage to be applied at each site. Once that available fee percentage is determined for the KCP, 85% of that rate will be used to determine the WFO fee percentage. Therefore, for every dollar the Contractor spends on WFO as applied to this fee category, the Contractor will earn fee at the rate of the total available fee percentage x 85%.

- (4) Fee earned pursuant to this provision shall be subject to Clause I.117, DEAR 970.5215-3, [Conditional Payment of Fee, Profit, and Other Incentives (DEC 2000) (Modified)], but otherwise shall not be subject to reduction under any other provision of the contract.

- 4. The following Section I clauses are deleted in their entirety and replaced with the following.

- a. **I.1 FAR 52.202-1 – DEFINITIONS (July 2004)**

- (a) When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless—
  - (1) The solicitation, or amended solicitation, provides a different definition;
  - (2) The contracting parties agree to a different definition;
  - (3) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or
  - (4) The word or term is defined in FAR Part 31, for use it the cost principles and procedures.
- (b) The FAR Index is a guide to words and terms the FAR defines and shows where each definition is located. The FAR Index is available via the Internet at <http://www.acqnet.gov> at the end of the FAR, after the FAR Appendix.

- b. **I.8 FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUNE 2003)**

(a) *Definitions.*

“Agency,” as used in this clause, means executive agency as defined in 2.101.

“Covered Federal action,” as used in this clause, means any of the following Federal actions:

- (1) The awarding of any Federal contract.
- (2) The making of any Federal grant.
- (3) The making of any Federal loan.
- (4) The entering into of any cooperative agreement.
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

“Indian tribe” and “tribal organization,” as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C.450B) and include Alaskan Natives.

“Influencing or attempting to influence,” as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

“Local government,” as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

“Officer or employee of an agency,” as used in this clause, includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.

- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
- (3) A special Government employee, as defined in section 202, Title 18, United States Code.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, Appendix 2.

“Person,” as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

“Reasonable compensation,” as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

“Reasonable payment,” as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

“Recipient,” as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

“Regularly employed,” as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall

be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

“State,” as used in this clause, means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) *Prohibitions.*

- (1) Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.
- (3) The prohibitions of the Act do not apply under the following conditions:
  - (i) Agency and legislative liaison by own employees.
    - (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison

activities not directly related to a covered Federal action.

- (B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.
- (C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:
  - (1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.
  - (2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
- (D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action --
  - (1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
  - (2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
  - (3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

- (E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

- (ii) *Professional and technical services.*

- (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of:

- (1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
- (2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

- (B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall



be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

- (C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
- (D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.

- (E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) *Disclosure.*

- (1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.
- (2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes --
  - (i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
  - (ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
  - (iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- (3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.
- (4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each

subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

- (d) *Agreement.* The Contractor agrees not to make any payment prohibited by this clause.
- (e) *Penalties.*
  - (1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C.1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
  - (2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.
- (f) *Cost allowability.* Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

c. **I.15 FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)**

- (a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.
- (b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract

performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) *Definitions.* As used in this contract

"HUBZone small business concern" means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

"Service-disabled veteran-owned small business concern"

(1) Means a small business concern

- (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
- (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

"Small disadvantaged business concern" means a small business concern that represents, as part of its offer, that

- (1) It has received certification as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B;

- (2) No material change in disadvantaged ownership and control has occurred since its certification;
- (3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
- (4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

"Veteran-owned small business concern" means a small business concern

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern

- (1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
  - (2) Whose management and daily business operations are controlled by one or more women.
- (d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

d. **I.20 FAR 52.222-3 CONVICT LABOR (JUNE 2003)**

- (a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of

Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

- (b) The Contractor is not prohibited from employing persons
  - (1) On parole or probation to work at paid employment during the term of their sentence;
  - (2) Who have been pardoned or who have served their terms; or
  - (3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if
    - (i) The worker is paid or is in an approved work training program on a voluntary basis;
    - (ii) Representatives of local union central bodies or similar labor union organizations have been consulted;
    - (iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;
    - (iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
    - (v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

e. **I.29 FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (AUG 2003)**

- (a) *Definitions. As used in this clause*

“Priority chemical” means a chemical identified by the interagency Environmental Leadership Workgroup or, alternatively, by an agency pursuant to Section 503 of Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

“Toxic chemical” means a chemical or chemical category in listed in 40 CFR 372.65.

- (b) Executive Order 13148 requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).
- (c) The Contractor shall provide all information needed by the Federal facility to comply with the following:
  - (1) The emergency planning reporting requirements of Section 302 of EPCRA.
  - (2) The emergency notice requirements of Section 304 of EPCRA
  - (3) The list of Material Safety Data Sheets required by Section 311 of EPCRA
  - (4) The emergency and hazardous chemical inventory forms of Section 312 of EPCRA
  - (5) The toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA
  - (6) The toxic chemical, priority chemical, and hazardous substance release and use reduction goals of Section 502 and 503 of Executive Order 13148.

f. **I.36 FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (DEC 2003)**

- (a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if

OFAC's implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

- (b) Except as authorized by OFAC, most transactions involving Cuba, Iran, Libya, and Sudan are prohibited, as are most imports from North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially designated Nationals and Blocked Persons at <http://www.epls.gov/TerList1.html>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR chapter V and/or on OFAC's website at <http://www.treas.gov/ofac>.
- (c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

g. **I.53 FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (JULY 2004)**

- (a) *Definitions.* As used in this clause

"Commercial item" has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.

"Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
- (c) (1) The Contractor shall insert the following clauses in subcontracts for commercial items:
  - (i) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.



- (ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).
  - (iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212(a)).
  - (iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).
  - (v) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Apr 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).
- (2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.
- (d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.
- h. **I.58 FAR 52.249-6 TERMINATION (COST-REIMBURSEMENT) (MAY 2004)**
  - (a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if
    - (1) The Contracting Officer determines that a termination is in the Government's interest; or
    - (2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
  - (b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes

beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

- (c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
- (1) Stop work as specified in the notice.
  - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.
  - (3) Terminate all subcontracts to the extent they relate to the work terminated.
  - (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  - (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.
  - (6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government
    - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;
    - (ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government; and

- (iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (c)(6) of this clause; *provided, however*, that the Contractor
  - (i) is not required to extend credit to any purchaser and
  - (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- (d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.
- (e) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within

45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

- (f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- (g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.
- (h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:
  - (1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.
  - (2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in paragraph (h)(1) of this clause.
  - (3) The reasonable costs of settlement of the work terminated, including

- (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
  - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
  - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.
- (4) A portion of the fee payable under the contract, determined as follows:
- (i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.
  - (ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.
- (5) If the settlement includes only fee, it will be determined under paragraph (h)(4) of this clause.
- (i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
  - (j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under

paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor

- (1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or
  - (2) The amount finally determined on an appeal.
- (k) In arriving at the amount due the Contractor under this clause, there shall be deducted-
- (1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;
  - (2) Any claim which the Government has against the Contractor under this contract; and
  - (3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.
- (l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.
- (m) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later

date determined by the Contracting Officer because of the circumstances.

- (n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

5. Appendix D – Key Personnel is deleted in its entirety and replaced with the following list on the next page.

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS  
SECTION J – LIST OF ATTACHMENTS

**APPENDIX D – KEY PERSONNEL (Rev. M003, M007, M021, M024, M048, M069)**

Pursuant to the clause entitled, “Key Personnel,” the following positions are considered to be essential to the work being performed.

**TITLE**

**NAME**

President	Carol Bibb
Vice President, Manufacturing Operations	Robert Jensen
Director, New Mexico Operations	Richard Taft
Director, Program Management	Jacque Hoisington
Manager, Quality Assurance	LaRoux Gillespie
Director, Mechanical, Rubber & Plastics Products and Materials Engineering	Brad Hughes
Director, Electronic Products	John Murray
Director, Facilities Management	Jim Jeffries
Director, Procurement and Materials Management	Doug McCrary
Director, Information Technology	Hunt Winston
Manager, Security	John Vaughn
Controller/Chief Financial Officer	David Aubrey
Manager, ES&H	Don Fitzpatrick